

**BEFORE THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA**

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| <b>IN THE MATTER OF THE NORTH HILLS</b>        | ) |              |
| <b>PETITION NO. 41I-116636 FOR DESIGNATION</b> | ) | <b>ORDER</b> |
| <b>OF A CONTROLLED GROUNDWATER AREA</b>        | ) |              |

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A Proposal for Decision in the above matter was issued August 5, 2002. Copies of the Proposal were mailed to all parties and interested persons. The Proposal recommended designation of the North Hills Helena Valley area as a temporary controlled groundwater area. The Proposal designated a temporary controlled groundwater area designation for the 52.5 square mile area within Sections 1-19, Township 11 North, Range 3 West; Sections 1-3, E½ 4, E½ 9, 10-15, 22-24, Township 11 North, Range 4 West; Sections 26-35, Township 12 North, Range 3 West; Sections 21-23, 25-28, E½ 33, 34-36, Township 12 North, Range 4 West, Lewis and Clark County, Montana.

The Department received one exception to the Proposal from Larry Marshall. The exception states Finding of Fact No. 25 is misleading in that maximum contaminant levels (MCL) are set only for public water supplies, and the well in which the MCL was exceeded (Thamke, 2000) is not a public water supply well. Mr. Marshall believes Finding of Fact No. 25 should be clarified. In addition, the exception suggests that Conclusion of Law No. 13 should be clarified to distinguish between a private well and a public water supply well.

Finding of Fact No. 25 refers to Mr. Levens' report and the Thamke report (2000). Neither report states that the well in which the maximum contaminant level for nitrate concentrations is exceeded is a private well or a public water supply well. Finding of Fact No. 25 does not state that the maximum contaminant level "set by EPA for public water supplies" applies to more than public water supply wells. Finding of Fact No. 25 will not be altered.

Conclusion of Law No. 13 refers to Finding of Fact No. 28 to conclude that groundwater may become unsuitable to drink if nitrate

concentrations are allowed to increase. The Hearing Examiner concluded a measure of suitability for specific uses is whether nitrate levels exceed safe drinking water standards in any groundwater, not just a public water supply well. Conclusion of Law No. 13 does not conclude that EPA's drinking water standards apply to all wells, and will not be altered.

**THEREFORE**, the Department finds the Proposal is supported by the record and that the law was properly applied to the facts, and hereby accepts and adopts the Findings of Fact and Conclusions of Law as contained in the August 5, 2002, Proposal for Decision, and incorporates them by reference.

Based on the record in this matter, the Director makes the following:

#### **ORDER**

A temporary controlled groundwater area is designated for the 52.5 square mile area within Sections 1-19, Township 11 North, Range 3 West; Sections 1-3, E½ 4, E½ 9, 10-15, 22-24, Township 11 North, Range 4 West; Sections 26-35, Township 12 North, Range 3 West; Sections 21-23, 25-28, E½ 33, 34-36, Township 12 North, Range 4 West, Lewis and Clark County, Montana. See attached map for exact boundaries. The designation shall be in effect for two years from the date of this Order. At the end of two years the Department of Natural Resources and Conservation (DNRC) will decide to terminate, extend as is, or extend with modifications the temporary controlled groundwater area.

The purpose of the designation is for gathering information on aquifer fractures, faults, and characteristics; aquifer recharge; and aquifer withdrawals to determine if withdrawals exceed recharge (capacity of the aquifer); if new wells will impair or substantially interfere with other groundwater wells; and if there is a contaminant plume developing that will be affected by withdrawals. With this designation, all new uses of groundwater and replacement wells in the designated area must obtain a new use permit or change authorization from the DNRC.

New groundwater appropriators and those seeking to drill replacement wells in the area must first apply to the DNRC Helena Water Resources Regional Office and obtain a license for drilling and testing purposes conditioned to allow the applicant and DNRC to gather data and information necessary for completing the application for permit or change authorization. The license may be conditioned to require 5-day advance notice of drilling to the Department's hydrogeologists to ensure adequate logging of appropriate lithologic, water chemistry, water level, aquifer test, and well construction data.

Water users should consult and work with the DNRC and Lewis and Clark County Water Quality Protection District in compiling, organizing, archiving, and interpreting area-wide information. If it appears that further study is necessary after the term of the temporary controlled groundwater area has expired, a new temporary area can be designated after notice and hearing as provided in Mont. Code Ann. § 85-2-507. If at any time during the term of the temporary controlled groundwater area, information becomes available to show that withdrawals have, or are about to, exceed recharge, the temporary groundwater area can be designated permanent and modified to include appropriate controls after notice and hearing as provided in Mont. Code Ann. § 85-2-507.

Dated this \_\_\_\_\_ day of October, 2002.

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